HONOURABLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HONOURABLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.1217 OF 2006
And
WRIT APPEAL No.1277 of 2006

–

Writ Appeal No.1217 of 2006

Between:

District Collector & District Election Authority,
(Cooperation), Nalgonda & another. … Appellants

And

Vemula Pedda Srinu & others. …Respondents.

Writ Appeal No.1277 of 2006

Between:

Kandaraboyana Veeraswamy … Appellant

And

District Collector & District Election Authority,
(Cooperation), Nalgonda & others. ….Respondents.

:: **J U D G M E N T** ::

Counsel for the appellants in Writ Appeal No.1217 of 2003 : Government Pleader for Co-operation.

Counsel for the appellant in Writ Appeal No.1277 of 2006 : Ms.M.Vidyavathi

Counsel for the respondents in Writ Appeal No.1217 of 2006 : Sri A.Prabhakar Rao

Counsel for respondent Nos.1 and 2 in Writ Appeal No.1277 of 2006 : Government Pleader for Co-operation.

Counsel for respondent Nos.3 to 6 in Writ Appeal No.1277 of 2006 : Sri A.Prabhakar Rao

29th November 2006

Per G.S.Singhvi, C.J.

These appeals are directed against order dated 13-11-2006 passed by the learned Single Judge in WPMP.No.30107 of 2006 (Writ Petition No.23608 of 2006), whereby he directed that the election scheduled on 16-11-2006 for Fishermen Co-operative Society, Kodad (for short, 'the society') shall be held by 'secret ballot' instead of 'show of hands.' For the sake of convenient reference, the relevant portions of the order of the learned Single Judge are extracted below:

> "It is asserted by the petitioners that there are in all, 414 members in Fishermen Co-operative Society, Kodada and the elections are scheduled to be held on 16-11-2006. But, the method of electing the members of Managing Committee of the Society is by way of 'show of hands'. Under Rule 22-B of A.P. Co-operative Societies Rules, only when small members are there in a society the elections should be conducted by way of show of hands, but not where there are 414 persons participating in the elections. This would create a chaos in the members and even it is difficult for the officers to conduct elections. Prima facie, I am in agreement with the submission made by the petitioners.

In the circumstances, the elections scheduled on 16-11-2006 for Fishermen Co-operative Society, Kodada, shall be held by secret ballot instead of 'show of hands.' "

Ordinarily, in exercise of the power vested under Clause 15 of the Letters Patent, the Division Bench is loath to interfere with the discretion exercised by the learned Single Judge in the matter of grant of interim injunction or stay, but keeping in view the settled principle that the High Court should not make interlocutory intervention in the process of election, we have decided to set aside the order under challenge.

In the writ petition filed by them, which is pending adjudication before the learned Single Judge, the petitioners (respondent Nos.1 to 4 in Writ Appeal No.1217 of 2006) have prayed for quashing election notice dated 8-11-2006 issued by Election Officer-cum-Fisheries Development Officer, Kodad Fishermen Co-operative Society, Kodad, Nalgonda District (hereinafter described as 'the Election Officer'). The main ground on which respondent Nos.1 to 4 have questioned the election notice is that the mode of election prescribed therein is contrary to Rule 22-B of the Andhra Pradesh Co-operative Societies Rules, 1964 (for short, 'the Rules'). According to respondent Nos.1 to 4, election to the society, which has 414 members is required to be held by secret ballot, but in complete disregard of Rule 22-B, the Election Officer has, on the basis of a resolution passed by the existing elected body, issued the impugned election notice. Along with the writ petition, respondent Nos.1 to 4 filed WPMP.No.30107 of 2006 for issue of an interim direction to respondent No.2 to hold election by secret ballot. The learned Single Judge accepted the prayer for interim relief and passed the order, the relevant portions of which have been extracted hereinabove.

We have heard learned Government Pleader and Ms. M.Vidyavathi, learned counsel for the appellants and Sri A.Prabhakar Rao, learned counsel for respondent Nos.1 to 4 and perused the record. Rule 22-B of the Rules, which has bearing on the decision of these appeals, reads as under:

> **"22-B. Mode of Election of Member of Committees of Weaker Section Societies or Societies having a small number of membership:-**
>
> (a) The Election Officer shall notify the date and time and place of election. The election will be held in the premises of the registered office of the society. The voting of the members of the committee of the weaker section societies or societies having a small number of membership may be done by show of hands at the general meeting convened for election. The mode and the procedure will be as follows.
>
> (i) Members will be admitted into the hall or premises on production of identity and after obtaining their signature or thumb impression in attendance register from 9.0 hrs. to 11.00 hrs. At 11.30 hrs., the Election Officer will announce the number and category of seats on the Managing Committee to be filled. For each seat/category, he will call for nominations and announce the names of the nominations received and conduct elections as detailed below:
>
> (ii) The Election Officer will read out the names of each candidate contesting and he will call upon members to express their vote by show of hands. He will record the number of votes secured by each candidate and announce it after every count.
>
> Provided that those who have polled the maximum votes in descending order will be declared elected depending upon the number of seats to be filled.
>
> (b) If there is any disturbance in conduct of poll then the Elections Officer shall stop the proceedings and shall send a report to the Election Authority who will then order for conduct of repoll on any other day to be specified by issue of notice. In such circumstances, where polling was disturbed or where election authority is of the view that polling by show of hands

is not possible, then the Election Authority may order for conduct of election by secret ballot. In such case, the procedure prescribed in the Rules for conduct of elections by secret ballot shall be followed through secret ballot.

Notwithstanding the above, if the outgoing managing committee of the society desires to conduct elections by secret ballot, it shall request the Registrar to conduct the election by secret ballot by submitting its proposal 60 days before the expiry of the term of the managing committee and the Registrar shall conduct the election by following the procedure as given in these rules."

An analysis of the plain language of the above reproduced rule shows that election to the societies of weaker section and those having a small number of membership can be done by show of hands at the general meeting convened for the purpose of election. Clause (b) of Rule 22-B envisages holding of election by secret ballot in case of disturbance in the conduct of poll. The non-obstante clause appearing below clause (b) of Rule 22-B envisages that if a request is made by the managing committee to that effect sixty days before the expiry of its term, then the Election Officer can order election by secret ballot. However, that clause is not applicable in the present case because the managing committee had passed a resolution in September, 2006 for holding election by show of hands and not by secret ballot.

The question whether the Fishermen Co-operative Society is a society of weaker section or the total number of members is small so as to justify holding of election under Rule 22-B (a) is yet to be adjudicated by the learned Single Judge, though, prima facie, we are inclined to think that the society does belong to the weaker section. The total number of members i.e., 414 is also not large enough so as to warrant a departure from the normal rule of holding election by show

of hands.

Since the matters are pending adjudication, we do not consider it proper to express any conclusive opinion, but, we have no hesitation to hold that without adjudicating and pronouncing on the legality of the election notice impugned in the writ petition, the learned Single Judge was not justified in passing an interim order, which has the effect of virtually allowing the writ petition filed by respondent Nos.1 to 4. Though not necessary, we deem it proper to remind ourselves that in election matters, interlocutory judicial intervention must be avoided unless it becomes imperative for advancing the cause of election (**Election Commission of India v. Ashok Kumar**[1] and order dated 3-8-2006 passed by the Division Bench of this Court in Writ Petition No.14068 of 2006 – **Eppala China Venkateswarlu and others v. Secretary to Government, Social Welfare (F) Department, Andhra Pradesh**).

In our considered opinion, a direction for changing the mode of election, which, as mentioned above, has the effect of virtually allowing the writ petition filed by respondent Nos.1 to 4 cannot be considered as a direction issued to further the cause of election. Therefore, we hold that the learned Single Judge committed a serious error by directing respondent No.2 to hold the election of the society by 'secret ballot'.

In the result, the appeals are allowed. Order dated 13-11-2006 passed by the learned Single Judge in WPMP.No.30107 of 2006 (Writ Petition No.23608 of 2006) is set aside.

As a sequel to the above, WAVMP.No.2574 of 2006 in Writ Appeal No.1217 of 2006 and WAVMP.No.2575 of 2006 in Writ Appeal SR.No.123508 of 2006 filed by respondent Nos.1 to 4 for vacating interim orders dated 15-11-2006 are dismissed.

At this stage, Sri A.Prabhakar Rao made a request that the Court may direct the learned Single Judge to finally dispose of the writ petition because the term of the existing managing committee is going to expire in the month of January, 2007.

The request of the learned counsel, though appears reasonable, cannot be accepted in the terms it has been made because it is highly inappropriate for the Division Bench to issue a mandate to the Single Bench to decide a particular matter within a specified timeframe. Hence, we deem it proper to observe that it will be open to respondent Nos.1 to 4 to make a request before the learned Single Judge for taking up the writ petition for final disposal out of turn and hope that the same would receive proper consideration by the concerned Bench.

-

-

-

G.S.SINGHVI, C.J.

29th November, 2006.

C.V.NAGARJUNA REDDY, J.

ARS

---

[1] (2000) 8 SCC 216